

Chapter 26 Environment

Article VII: Stormwater Management

Division 1. General Provisions

Section 1: Purpose

The stormwater management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development. Proper management of stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the county's natural resources.

Section 2: Scope

Except as otherwise expressly stated, the stormwater management regulations of this article apply to all development within unincorporated Buncombe County outside the extraterritorial jurisdiction and incorporated boundaries of any municipality.

Section 3: Applicability and Exemptions

The stormwater management regulations of this article do not apply to any of the following development activities:

- a) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:
 - Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
 - Dairy animals and apiary products.
 - Poultry and poultry products.
 - Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 - Bees and dairy products.
 - Fur producing animals.

- b) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality.
- c) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.
- d) Commercial development on lots less than one acre and with total land disturbance less than one acre.
- e) Residential development that disturbs less than one acre, including total buildout of the site.
- f) Development or redevelopment that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale.
- g) Any development in which the owner has accrued a vested right. A vested right is recognized if either a preliminary plan has been approved by the Planning Board that meets the required specifications and standards of Buncombe County ordinances, or a Land Disturbing Permit has been issued pursuant to Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this ordinance, and that such plan or permit remains unexpired.
- h) Land disturbing activities for the purpose of surveying, geotechnical exploration and access for percolation tests and wells not to exceed a maximum of one acre. This exemption does not include clearing for building pads or leach fields.
- i) Single family home site construction and associated land disturbing activities on a lot of record prior to September 27, 2006 that results in total impervious area of fifteen percent (15%) or less on the lot.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this ordinance may appeal to the Buncombe County Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop his site under plans submitted prior to the effective date of this ordinance.

Development and redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

Section 4: Definitions

Applicant. An owner or developer of a site who executes the Stormwater Permit Application pursuant to Buncombe County's Stormwater Ordinance.

Built-upon Area. That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Connection. Any ditch, pipe, or other device for the diversion or transmission of storm drainage, which will in any way affect the operation or maintenance of the drainageways.

Conveyance. Any feature of the landscape or earth, manmade or natural, that carries water in a concentrated flow.

Detain. To store and slowly release stormwater runoff following precipitation by means of a surface depression or tank and an outlet structure.

Ditch. 'Ditch or canal' means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas.

Development. Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than a rebuilding activity that does not qualify as redevelopment.

Device. Any reference to "device" or "stormwater device" or "measures" or any other references to the means of accomplishing the purposes and goals of this Ordinance shall be considered a reference to "Structural BMP" as hereinafter defined.

Drainage structures. Shall include swales, channels, storm sewers, curb inlets, yard inlets, culverts, and other structures designed or used to convey stormwater.

Ephemeral Stream. Ephemeral (stormwater) stream means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events.

High Density Project. Any project that exceeds the low density threshold for dwelling units per acre and built-upon area.

Impervious surface. Any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.

Intermittent Stream. Intermittent stream means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.

Land disturbing activity. Any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Low Density Project. A project that has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

One-year, 24-hour storm. The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24-hours.

Peak Velocity. The velocity of flow through the cross section of the main channel at the peak flow of the storm of interest.

Person. Any person, firm, corporation, partnership or other entity, either singly or in cooperation with others, that undertakes any project coming under the provisions of this ordinance.

Person Responsible for Maintenance. The developer(s), Property owners association, and/or individual property owners having responsibility for the care and maintenance of stormwater improvements under the provisions of this ordinance.

Perennial Stream. Perennial stream means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year.

Responsible parties. Developer(s), Property owners association, and/or individual property owners having responsibility for the care and maintenance of stormwater improvements as well as any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.

Retain. To capture and hold stormwater runoff following precipitation by means of surface depression allowing the water to infiltrate into the soil, thus reducing the hydrologic and pollution impacts downstream.

Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from rainfall events.

Stormwater Administrator. Stormwater Administrator shall be designated by the Buncombe County Board of Commissioners to administer and enforce this ordinance. Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of Buncombe County may be carried out by his or her designee.

Structural BMP. A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-*development* hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous

with “structural practice”, “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

Time. Computation of Time. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by Buncombe County, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by Buncombe County. References to days are calendar days unless otherwise stated.

Division 2. Administration and Procedures

Section 1: Review and Decision-Making Entities

Buncombe County Planning and Development will administer this ordinance. The Director of Planning and Development will designate a Stormwater Administrator. In addition to the powers and duties that may be conferred, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a) To review and approve or disapprove applications for approval of plans pursuant to this ordinance.
- b) To make determinations and render interpretations of this ordinance.
- c) To establish application requirements and schedules for submittal and review of applications and appeals, to review and approve applications.
- d) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e) To make records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance.
- f) To provide expertise and technical assistance to Buncombe County.
- g) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h) To take any action necessary to administer the provisions of this ordinance.

Section 2: Review and Appeals Procedures

- a. A stormwater permit is required for all development and redevelopment which equals or exceeds one acre of residential development, or on commercial lots that are one acre in size or more, unless exempt pursuant to this ordinance.
- b. The Buncombe County Board of Commissioners shall establish permit review fees as well as policies, and may amend and update the fees and policies when needed.

- c. An applicant shall be entitled to two (2) readings of any application submitted without payment of an additional permit review fee. This shall be construed to mean review of the original application and review of the re-submittal of that application with or without revisions. Any re-submittal by the applicant thereafter shall be treated as a new application and must be accompanied by payment of the full permit review fee in existence at the time of filing.
- d. For all activities which are subject to this ordinance, no person shall initiate, proceed, or undertake any land disturbing or development activity for which a permit is required without first being issued a written stormwater control permit. All other required applications must be received and permits must be obtained prior to the start of the work. These may include but are not limited to Soil Erosion and Sedimentation Control, Flood Damage Prevention, Subdivision, Building Permits and Inspections, NC Department of Transportation, NC Division of Water Quality, US Army Corps of Engineers, and NC DENR-Dam Safety.
- e. Plan review fees shall be double the amount when land disturbing activity begins before a stormwater permit is obtained from the county.
- f. Two (2) copies of the stormwater plan submittal shall be submitted to Planning and Development for review.
- g. The Department shall review the plan for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming stormwater plan will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.
- h. Within thirty (30) days of receipt of application for stormwater plan approval, Planning and Development shall take action on the plan.
- i. Planning and Development shall forward a copy of the plan to the Buncombe County Soil and Water Conservation District who, within twenty (20) days of receipt of the plan, will review the plan and submit its comments and recommendations to the Stormwater Administrator at the Buncombe County Planning and Development Department. Failure of the Soil and Water Conservation District to submit its comments and recommendations within twenty (20) days shall not delay final action on the plan. Planning and Development is solely responsible for plan(s) review and will incorporate review comments and recommendations from the Soil and Water Conservation District into its examination of the plan application.
- j. Approval, approval with modifications, or denial of the proposed stormwater plan shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Stormwater Administrator at the Buncombe County Planning and Development Department to a plan review committee within 15 days after receipt of written notice of disapproval or approval with modifications.

Only the applicant can appeal the decision of the Stormwater Administrator.

(1.) A condition of plan approval will be the right to physical inspection of the drainage structures and stormwater management measures during and after construction.

- k. Hearings held pursuant to this section shall be conducted by a plan review committee consisting of the director of Planning and Development, the director of the Soil and Water Conservation District, and the director of General Services within 30 days after the date of the appeal or request for hearing.
- l. The plan review committee shall decide appeals within 15 days after the date of the hearing on any stormwater plan. If the review committee upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the local plan review committee's decision to the Board of Adjustment within 15 days.
- m. The Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.
- n. Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within thirty (30) days of the final decision of the Board of Adjustment.
- o. The Stormwater Administrator shall take action on revisions to a stormwater plan which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
- p. If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the current standards. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.
- q. Application for an amendment to a stormwater plan in written and graphic form may be made at any time. Until such time that any amendment is approved by the Stormwater Administrator, it shall be unlawful to deviate from the approved plan.
- r. An approved plan shall become null and void if the applicant has failed to make progress on the site within six months after the date of approval. The Stormwater Administrator may grant a single, six-month extension of

this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan. In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

Section 3: Penalties for Violation

Civil penalties may be imposed as follows:

- a) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues a development for which a stormwater plan is required, except in accordance with the terms, conditions and provisions of an approved plan, is subject to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which Buncombe County is subject for violations of its Phase II Stormwater permit as a result of the applicant's non-compliance. Each day of a continuing violation shall constitute a separate violation. Additional fees may be charged for remedies and enforcement of this article.
- b) No penalty shall be assessed until the applicant has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation can be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action.
- c) If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.
- d) Refusal to accept the notice or failure to notify the Stormwater Administrator of a change of address shall not relieve the violator's obligation to pay such a penalty.
- e) The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein.
- f) Buncombe County review or approval of any plans, applications, specifications or plats of any form or nature delivered to the county by any applicant in respect to this ordinance shall not create a responsibility or liability of the county for their accuracy, sufficiency or compliance with other laws and regulations.

Division 3: Stormwater Plan Submittal

Section 1: Permit Application and Plans

- a) The stormwater permit application and plan shall refer to the drawings and technical documentation for planned site improvements necessary to fulfill the drainage and stormwater management requirements of this article. This shall include but not be limited to:
 - [1] Location and topographic maps with the total drainage area delineated including both on site and off site areas and sufficient information to define all ridges, existing streams, location of the 100-year floodplain and floodway, drainage ways, wetland areas, existing springs, and elevation of any proposed discharge point, and any additional information required to evaluate the existing and proposed drainage system, which may include a soil analysis.
 - [2] Architectural and engineering drawings showing plan, profile and details of piping, drainage structures, swales, and channels tying into a network of pre-existing manmade or natural channels.
 - [3] Written project specifications governing work performance and materials.
 - [4] Computations and assumptions sufficient to support the design of piping, drainage structures, retention/detention ponds, and permanent erosion control measures.
 - [5] Whatever other narrative statements necessary to adequately describe the proposed site improvements and the measures planned to comply with the requirements of this article.
- b) The stormwater permit application and plan shall be prepared by and shall bear the seal and signature of a professional engineer or landscape architect licensed in the state of North Carolina, competent to perform all aspects of design.
- c) The stormwater permit application and plan shall be prepared to meet the basic objectives and design standards for drainage and stormwater management as described in this ordinance.
- d) The stormwater permit application and plan shall show the existing site topography and proposed site drainage improvements in sufficient detail to facilitate plan review and construction. The plan drawings shall be presented at a scale no smaller than 1 inch = 50 feet.

Section 2: Maintenance Manual

- a) The stormwater permit application and plan shall be accompanied by an operations and maintenance manual. The manual shall contain a narrative describing each installed measure and device and its design specifications. The manual shall indicate for each installed measure and device what operation and maintenance actions are needed and what specific quantitative criteria will be used to determine when these actions will be taken. The manual must indicate the steps that will be taken to restore a measure or device to the design specifications if a failure occurs.
- b) after the permit and plan is approved and installation is complete, if changes have been made to any installed measure or device, the manual shall be revised to reflect these changes, and such changes shall be subject to the review and approval of the Stormwater Administrator.

Section 3: As-built Plans and Specifications

- a) The designer of the stormwater control plans shall provide as-built plans of all stormwater control and management plans showing the field location, size, depth, and planted vegetation of all measures and devices as installed. If the previously submitted plans remain unchanged, an as-built certification to the existing plans will be required. No certificate of compliance or occupancy shall be issued without said as-built plans.
- b) The designer shall certify, under seal, that the as-built stormwater measures and devices and their installation are in compliance with the County's stormwater ordinance.
- c) The designer shall submit a final electronic file of the stormwater plan that is readable by GIS systems. Buncombe County prefers electronic files submitted in the standard formats listed below.
 - a. Shape Files (.shp, .dbf, .shx, .prj, & .sbx)
 - b. .dwg & .dxfEach submission must include projection and datum information (i.e., NAD 83, NC state plane fleet). Contact Buncombe County for other acceptable standard formats.

Division 4: Standards

Section 1: Stormwater Management Objectives

- a) In order to reduce drainage related damage and hazards, adequate natural drainage systems or stormwater management installations are required to collect and transmit stormwater flows into either existing drainage facilities or a natural drainage system.
- b) All storm drainage facilities shall be designed, constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such improvements. Specifically:

- [1] Offsite areas which drain to or across a site proposed for development must be accommodated in the stormwater plans for the development. The stormwater management system must be capable of conveying the existing offsite flows through or around the development such that the volume and rate of flow from the adjacent property is not altered. If offsite flows are carried in the site system any detention system shall be sized to accommodate this flow. The flow must be released to the original drainage area.
- [2] Storm drainage facilities shall be designed to limit the discharge from the site to the rate that existed prior to development of the site. For projects that are redeveloping a developed site, the discharge will be limited to that which occurs before any new development. The type and location of the discharge will be as occurred before the current development unless the discharge is to a manmade conveyance system.
- c) All site improvements shall be provided with a drainage system that is adequate to prevent the undue retention of surface water while promoting recharge of groundwater through infiltration on the development site.
- d) These goals for discharge can be accomplished by designing, constructing and maintaining all stormwater management installations to the extent practicable:
 - [1] Avoid increases in surface runoff volume and velocity by including measures which promote the infiltration of stormwater,
 - [2] Maximize the time of concentration of stormwater runoff, and
 - [3] Promote the filtration and precipitation of pollutants from stormwater runoff in order to protect the water quality of the receiving watercourse.
- e) Whenever practicable, the drainage system of a development site shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets. Permission must be received from other applicable entities for connection.
- f) To the extent practicable, all site improvements shall conform to the natural contours of the land, and without disturbance, utilize the preexisting natural and preexisting manmade drainage ways.
- g) To the extent practicable, lot boundaries within subdivisions shall be made to coincide with natural and preexisting man made drainage ways to avoid creation of lots that can only be built upon by altering such drainage ways.
- h) Stormwater shall not be diverted from one natural drainage basin into another.
- i) Stormwater shall not be channeled or directed into sanitary sewers.
- j) Stormwater controls shall not be located within the designated floodway.

- k) Stormwater controls shall not be located within 30 feet landward from any perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the US Department of Agriculture or the most recent version of the quadrangle topographic maps prepared by the USGS.
- l) Streams shall not be relocated unless it is demonstrated that the relocation of the stream will have a positive impact on water quality while reducing velocity. All other applicable permits must be received.

Section 2: Stormwater Management Design Standards

- a) Design standards are established for the purpose of promoting sound development practices which respect, preserve and enhance the County's watercourses and are not intended to prohibit the use of innovative and alternative techniques which can be demonstrated to have the potential for successfully achieving the objectives stated in Section 1.
- b) Design Standards:

[1] DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

Low-density projects shall comply with each of the following standards:

- a) Stormwater runoff from the *development* shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- b) Low Impact Development techniques shall be utilized to the maximum extent possible.
- c) The post development peak rate of runoff for the 1 year 24 hour storm event shall not exceed the pre development rate.
- d) All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception of this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology.
- e) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to

ensure that future development and redevelopment maintains the site consistent with the approved project plans.

[2] DEVELOPMENT STANDARDS FOR HIGH DENSITY PROJECTS

High-density projects shall comply with each of the following standards.

- a. The measures for high density projects shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- b. All structural stormwater treatment systems used to meet the requirements of Section 2(B)(2) shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).
- c. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology.
- d. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

[3] The hillside development standards of Chapter 70 of Buncombe County's Code of Ordinances (Section 70-68) apply. This section limits the density of disturbed area and impervious surfaces on steep slopes.

[4] The design of drainage facilities in flood hazard areas shall be consistent with the requirements of Buncombe County's Flood Damage Prevention Ordinance. No stormwater controls shall be allowed within the floodway. No stormwater controls shall be within 30 feet landward of any perennial and intermittent surface water.

- [5] The computation of stormwater runoff shall follow established engineering practice. Acceptable methods of computation include the Rational Method, the Peak Discharge Method as described in USDA Technical Release Number 55 (TR-55), and USGS Regression Equations, where applicable. If an alternate method is proposed, the method should be described and justification for using this method should be provided. The same method must be used for both the pre- and post-development conditions. The Stormwater Administrator may set the design precipitation amount used in the SCS Method in inches for the 1 year 24 hour storm event for the county.
- [6] Runoff coefficients shall be based on full development of the project and of the watershed to the extent of the current zoning or land use patterns, and shall include the complete development of the site through build-out, including roof tops and other impervious areas that may be proposed.
- [7] Stormwater detention shall be provided to insure that the rate of discharge does not exceed the pre-development rate of discharge. In order to demonstrate this, pre and post development hydrographs will be submitted that demonstrate no increase in flow leaving the site during the 1- year, 24 hour storm. Inflow-outflow calculations shall also be submitted for any stormwater detention ponds.
- [8] Stormwater controls that drain in whole or part to designated trout waters shall be designed and shall implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance.
- [9] Variances.
- a. Any person may petition to the Buncombe County Board of Adjustment or such other local governing body having jurisdiction in the area where the project is located for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:
 1. Unnecessary hardships would result from strict application of this ordinance.
 2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 3. The hardships did not result from actions taken by the petitioner.
 4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.
 - b. The Board of Adjustment or other local governing body having jurisdiction may impose reasonable and appropriate conditions and safeguards upon any variance it grants, and any such hearing before the Board of Adjustment shall be conducted in the manner provided in the provisions of the Buncombe County Zoning Ordinance for Appeals and applications. Such hearings before any other local governing

body having jurisdiction shall be conducted pursuant to its rules for hearing appeals of administrative decisions, or in accordance with Buncombe County Zoning Ordinance §78-623.

Section 3: Stormwater Design Manual

The Buncombe County Planning and Development Department may furnish additional guidance and standards for the proper implementation of the regulations of this article and may provide such information in the form of a Stormwater Design Manual. Stormwater management practices that are designed, constructed, or maintained in accord with the Stormwater Design Manual must be presumed to comply with these regulations. However, the Stormwater Administrator shall have the right to consult other engineers and duly qualified professionals, and to impose any conditions or require any modifications deemed necessary to meet the purpose, intent and requirements of this ordinance.

If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

- a. *Changes to Standards and Specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

Division 5: Construction and Maintenance

Section 1: Construction of Stormwater Management Structures

- a) Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The applicant is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications. Inspections which may be performed by Buncombe County during construction will not relieve the applicant of the responsibility to install stormwater management and drainage facilities in accordance with the approved plan.
- b) In response to a complaint, or as a compliance check with the requirements of the ordinance, the Stormwater Administrator or the designee shall perform a physical inspection of the construction of drainage structures and stormwater management measures, or monitor long term maintenance procedures.

- c) The applicant will be notified in writing of any substandard and/or non-conforming work identified by the Stormwater Administrator. The notification shall state the specific work that is out of compliance, the specific reasons for noncompliance, and the corrective measures necessary to bring the work into compliance.
- d) Failure of the applicant to correct substandard and/or nonconforming work identified by the Stormwater Administrator shall be sufficient reason to refuse or revoke building permits, and/or deny occupancy permits for buildings serviced by said work. Appeals on determination of nonconforming or substandard work and/or the adequacy of the corrective measures executed shall be made in accordance with Division 2, Section 2 of this ordinance. Pending the ruling on the appeal, the determination of the Stormwater Administrator remains in effect.
- e) Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Stormwater Administrator.

Section 2: Performance Security for Installation and Maintenance

- a) Buncombe County will require the submittal of a surety performance bond made by a surety bonding company licensed and authorized to do business in North Carolina, a bond of the owner/developer with an assignment to the county of a certificate of deposit as security for the bond, a bond of the owner/developer by an official bank check drawn in favor of the county and deposited with the county, or cash or an irrevocable letter of credit deposited with the county prior to issue of a permit in order to ensure that the stormwater system is installed by the developer and functions as required by the approved stormwater plan.
 - 1) Surety bonds in the form of cash shall be held in accordance with policies and procedures as outlined by the Buncombe County Finance Department.
- b) The amount of an installation performance security shall be the total estimated construction cost of the system and devices approved under the permit, plus 25%.
- c) The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant in accordance with this ordinance.
- d) Upon default of the applicant to construct, maintain, repair, and if necessary reconstruct any stormwater device in accordance with the applicable permit, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the applicant to comply with the permit. In the event of a default triggering the use of installation of performance security, Buncombe County shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
- e) If Buncombe County takes action upon such failure by the applicant, Buncombe

County may collect the difference should the amount of the reasonable cost of such action exceed the amount of the security held. This difference will be collected from the applicant.

- f) Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated.

Section 3: Completion

The developer is responsible for completing all stormwater improvements in accordance with the requirements of this article and other applicable ordinance and laws.

Section 4: Assurance that Improvements will be Maintained

- a) The County may not approve a record plat, or in the case of single-lot development not requiring a record plat may not issue a building permit, until those stormwater improvements required of the developer have been completed or a performance guarantee has been provided.
- b) Upon completion of required improvements, the design professional must submit as-built plans, or certify the existing plans as as-built if no changes have occurred, of the installed stormwater improvements to the Stormwater Administrator. These plans must indicate that stormwater improvements were constructed in accordance with the County ordinance and approvals.

Section 5: Maintenance

All stormwater improvements must be maintained so they will continue to serve their intended functions.

- a) The developer must maintain stormwater improvements until accepted by a property owners association or lot owner. The developer must disclose which party will be responsible for continued maintenance on the record plat and on the stormwater management plan. The developer will be responsible for the installation, operations, and maintenance of the stormwater controls until ownership is conveyed. The responsibility and agreement for operations and maintenance for the stormwater system is transferred with title, as each property is conveyed.
- b) Before improvements are accepted for maintenance by the property owners association or lot owner, the developer or the developer's engineer or landscape architect, must certify to the property owners association or lot owner and to the County that improvements are complete and functioning as designed.
- c) The developer must reference on the record plat, deed, restriction or in covenants an operations and maintenance plan that instructs the property owners association or lot owner about the annual operations and maintenance tasks for at least a 20-year period.
- d) The person responsible for maintenance of any stormwater structure or feature installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report at least once every three (3) years. However, the

Stormwater Administrator shall have the right to demand an inspection report at any time should he/she reasonably believe that any stormwater structure or feature is constructed or being maintained in violation of this ordinance. Such inspection report shall be prepared by a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The report shall contain the following:

- [1] The name and address of the land owner.
- [2] The recorded book and page number of the lot of each stormwater control.
- [3] A statement that an inspection was made of all stormwater controls and features.
- [4] The date the inspection was made.
- [5] A statement that all inspected controls and features are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance.
- [6] The signature and seal of the engineer, surveyor, or landscape architect.

Should the stormwater inspection reveal substantial maintenance or repair recommendations it shall be the owners responsibility to retain a registered professional engineer or landscape architect competent in the area of stormwater management to develop plans and specifications for such repairs. Plans for proposed repairs shall be submitted to the Buncombe County Stormwater Management Office for approval prior to construction except for emergency repairs supervised by a professional engineer or landscape architect. Plans and specifications for repairs made in emergency conditions shall be submitted to the Stormwater Management Office within 30 days after the emergency.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator every three years thereafter on or before the date of the as-built certification.

It will be the responsibility of the property owners association or lot owner to update the plan annually.

- e) The developer must record, and reference on the record plat, a maintenance agreement, or restrictive covenant that sets forth the property owners association's or lot owner's continuing responsibilities for maintenance, including specifying how cost will be apportioned among lot owners served.
- f) Maintenance Agreements. All maintenance agreements or covenants shall contain without limitation the following provisions:

- 1 A description of the property on which the device is located and all easements from the site to the device;
 - 2 Size and configuration of the device;
 - 3 A statement that properties which will be served by the device are granted rights to construct, use, inspect, replace, reconstruct, repair, maintain, access to the device and to transport, store, and discharge stormwater to and from the device;
 - 4 A statement that the association and its individual members are responsible parties for repairs and maintenance of the devices and any unpaid ad valorem taxes, public assessments for improvements and unsafe building and public nuisance abatement liens charged against the device, including all interest charges together with attorney fees, cost and expenses of collection. The maintenance agreement shall specify that each member shall have a duty to contribute to the maintenance of the stormwater device. That failure to maintain stormwater control measures is a violation of the Buncombe County Stormwater Ordinance potentially subjecting each lot owner subject to this legal document to significant daily civil penalties and other enforcement actions.
 - 5 If an association is delegated these responsibilities, then membership into the association shall be mandatory for each parcel served by the device and any successive owner, the association shall have the power to levy assessments for these obligations, and that all unpaid assessments levied by the association shall become a lien on the member's individual parcel who fails to pay such assessments. Common expenses for the association shall include maintenance of stormwater control measures.
 - 6 An operation and maintenance plan or manual together with a budget shall be provided by the applicant. The plan or manual shall indicate what operation and maintenance actions are needed, and what specific quantitative criteria will be used to determine when those actions are to be undertaken. The plan or manual must indicate the steps that will be taken to restore a stormwater system to design specifications if a failure occurs. The budget should include both annual costs such as routine maintenance, periodic sediment removal and replenishment of rip-rap, insurance premiums, taxes, mowing and reseeding, required inspections. These required documents shall be attached to the property association declaration as an exhibit.
 - 7 A statement that stormwater control measures shall be maintained in accordance with the attached stormwater operations and maintenance manual and budget and at all times the stormwater control measures shall comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the stormwater control measures shall perform as designed.
 - 8 Without limitation to § potential liability for failure to repair and/or maintain any device(s) of the association and its individual members-a statement that each such individual member shall be entitled to recover from any and all other association members a pro rata share, or an established apportionment, of any amounts that each such individual member may be found liable in excess of that individual member's pro rata share or apportionment.
- g) The developer must record easements for access, maintenance and inspections by any property owners association and by Buncombe County Government.

- h) All maintenance documents required by this article must be submitted to the Stormwater Administrator before record plat approval, and such documents must be referenced on the record plat, or, in the case of single-lot developments not requiring record plats, documentation must be submitted to the Stormwater Administrator before building permit issuance.

Division 6. Enforcement and Violations.

1. General Provisions.

(a) Authority to Enforce. The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Buncombe County. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of Buncombe County.

(b) Violation Unlawful. Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

(c) Each Day a Separate Offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.

(d) Legal Action. In the event legal action by Buncombe County becomes necessary to enforce the provisions of this Ordinance, then Buncombe County shall name as necessary parties defendant any developer(s), Property owners association, and/or individual property owners having responsibility for the care and maintenance of stormwater improvements under the provisions of this ordinance as well as any other person, firm, corporation, partnership or other entity, either singly or in cooperation with others, that undertakes any project coming under the provisions of this ordinance.

2. Remedies and Penalties. The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(a) Remedies

1. Withholding of Certificate of Occupancy

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater devices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

2. Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Stormwater Administrator, or other authorized agent, may withhold may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance for the land on which the violation occurs.

3. Injunction, Abatements, etc.

The Stormwater Administrator, with the written authorization of the County Manager, or her designee, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

4. Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the County Manager, or her designee, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

5. Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

6. Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which Buncombe County is subject for violations of its Phase II Stormwater permit.

7. Criminal Penalties

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

3. Procedures.

(a) Initiation/Complaint. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

(b) Inspection. The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(c) Notice of Violation and Order to Correct. When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the responsible party or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(d) Extension of Time. A responsible party who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 90 days. The Stormwater Administrator may grant 90-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(e) Enforcement After Time to Correct. After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is

corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

(f) Emergency Enforcement. If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

Division 7: Relationship to Other Laws, Regulations and Private Agreements

- a) **Conflict of Laws.** This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.
- b) **Private Agreements.** This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Buncombe County be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

Division 8: Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

This ordinance shall be effective upon adoption.

Adopted this the 24th day of June, 2008.

ATTEST

BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE

Kathy Hughes

Nathan Ramsey

Kathy Hughes, Clerk to the
Board of Commissioners

Nathan Ramsey, Chairman
Board of Commissioners

APPROVED AS TO FORM

Joe Connolly

Joe Connolly, County Attorney